

FILED

APR 20 1984

No. 83-1315

IN THE
SUPREME COURT OF THE UNITED STATES

ALEXANDER L. STEVENS.
CLERK

OCTOBER TERM, 1983

RIVERBEND FARMS, INC.

Petitioner,

v.

AGRICULTURAL LABOR RELATIONS BOARD, and
UNITED FARM WORKERS OF AMERICA, AFL-CIO,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF CALIFORNIA

REPLY BRIEF

BETTY SOUTHARD MURPHY
Counsel of Record
EVAN JAY CUTTING
ELIZABETH R. MOORE
BAKER & HOSTETLER
818 Conn. Ave., NW
Washington, DC 20006
(202) 861-1500

THOMAS M. GIOVACCHINI
CAMPAGNE & GIOVACCHINI
Airport Office Center
5110 E. Clinton Way
Suite 117
Fresno, CA 93727
(209) 255-1637

Counsel for Petitioner,
RIVERBEND FARMS, INC.

No. 83-1315

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

RIVERBEND FARMS, INC.,

Petitioner,

v.

AGRICULTURAL LABOR RELATIONS BOARD, and
UNITED FARM WORKERS OF AMERICA, AFL-CIO,

Respondents.

On Petition for A Writ of Certiorari
to The Supreme Court
of The State of California

REPLY BRIEF

Respondent Agricultural Labor Relations Board ("ALRB") contends that petitioner Riverbend Farms, Inc. ("Riverbend") was not denied constitutionally guaranteed due process of law when Riverbend was added as a respondent to a state administrative Complaint after the close of an administrative hearing. The ALRB's contention is that, as a factual matter, the

counsel who had represented Riverbend previously was present throughout the hearing, even though he was representing a different company. See, e.g., Respondent's Brief in Opposition, Riverbend Farms, Inc. v. Agricultural Labor Relations Board, et al., No. 83-1315 at 12-15 [hereinafter cited as Respondent's Brief in Opposition]. However, Riverbend was not present at the hearing, through counsel or otherwise, as a matter of law, since Riverbend was dismissed on the first day of the state administrative proceedings. (Tr., March 9, 1979, at 5). The presence at the hearing of counsel representing Riverbend's wholly-owned subsidiary, a legally separate and factually distinct party, is irrelevant for due process purposes. See, e.g., Coe v. Armour Fertilizer Works, 237 U.S. 413, 423 (1915).^{1/}

^{1/} The California Supreme Court held that Riverbend was not denied due process because the counsel that had represented (footnote continues)

Respondent also argues that California Rules of Civil Procedure permit amendments to conform to proof, such as that made in the administrative hearing following the close of evidence, which added Riverbend as a party to the unfair labor practice proceeding. See Respondent's Brief in Opposition, at 14-15. While California law unquestionably permits such procedures, amendments to conform to proof in any jurisdiction must meet the requirements of due process of law. See, e.g., In re Ruffalo, 390 U.S. 544, 550-51 (1968)

1/ (footnote continued)

Riverbend prior to its dismissal attended the duration of the hearing on behalf of Riverbend's wholly-owned subsidiary. (App. at 20a). But once Riverbend was dismissed he represented only the subsidiary, and, thus, Riverbend was neither actually nor constructively present. And as this Court has long held, "no court can adjudicate directly on a person's right, without the party being either actually or constructively before the court." Bogart v. Southern Pacific Co., 228 U.S. 137, 141 (1913). See also Zenith Radio Corp. v. Hazeltine Research, 395 U.S. 100, 110 (1969).

(holding unconstitutional an amendment to conform to proof which changed the nature of the proceedings). Due process requires the presence of a party, aware of its potential liability, participating in the development of the proof to which the amendment will conform. Id. Without some prior communication of potential liability, the party against whom the conforming amendment is to be offered may fail to participate in the development of evidence.

Id. at 551, n.4.^{2/}

Here, Riverbend -- far from receiving prior communication of potential liability -- was dismissed as a party on the first day of proceedings.

^{2/} Indeed, at the pre-hearing conference, the Hearing Officer directed ALRB's counsel to notice Riverbend at the "earliest possible moment" should ALRB desire to amend the Complaint. (Tr., March 1, 1979, at 7-8.) No such notice was given. Despite the ALRB's failure to give notice, the Hearing Officer permitted the amendment.

After its dismissal, it had no opportunity to participate in the development of the proof to which the later amendment adding Riverbend as a party purportedly conformed. Such an amendment, allegedly to conform the complaint to a record to which Riverbend did not contribute, fails to satisfy the requirements of due process of law as enunciated in Ruffalo.

Riverbend was dismissed as a party on the first day of the proceedings, and then restored to the Complaint as a party after the close of the evidence. The record was not reopened yet large monetary damages were assessed against Riverbend. Riverbend failed to receive the most fundamental of due process guarantees, the right to a day in court. The requirements of the Constitution dictate that Riverbend be permitted to reopen the record and present evidence

on issues for which it may be held liable.

Respectfully submitted,

BETTY SOUTHARD MURPHY
Counsel of Record

EVAN JAY CUTTING
ELIZABETH R. MOORE
BAKER & HOSTETLER
818 Conn. Ave., NW
Washington, DC 20006
(202) 861-1500

THOMAS M. GIOVACCHINI
CAMPAGNE & GIOVACCHINI
Airport Office Center
5110 E. Clinton Way
Suite 117
Fresno, CA 93727
(209) 255-1637

Counsel for Petitioner,
RIVERBEND FARMS, INC.